

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JUANA VIADA, et al., :
Plaintiff, : 04 Civ. 02744 (VM)
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DECISION AND ORDER
- against - :
OSAKA HEALTH SPA, INC., et al., :
Defendants. :
-----X

VICTOR MARRERO, United States District Judge.

I. BACKGROUND

By Order dated September 27, 2005, Magistrate Judge Kevin N. Fox, to whom this matter had been referred for pretrial supervision, issued a Report and Recommendation (the "Report") recommending that the Court grant the application of plaintiff Elena Zumba ("Zumba") made pursuant to Fed. R. Civ. P. 41(a) (2) to withdraw as a plaintiff in this action. The Report further recommended that the withdrawal be conditioned upon Zumba's providing defendants with her address so that, in the event it became necessary to do so during the course of the remaining litigation, a subpoena may be served upon her to compel her attendance at a deposition or at the trial of this action. Zumba's counsel filed a timely response objecting to this condition on the ground that counsel never had Zumba's address or knowledge of her whereabouts.

II. STANDARD OF REVIEW

A district court evaluating a Magistrate Judge's report may adopt those portions of the report to which no "specific, written objection" is made, as long as the factual and legal bases

supporting the findings and conclusions set forth in those sections are not clearly erroneous. See Fed. R. Civ. P. 72(b); Thomas v. Arn, 474 U.S. 140, 149 (1985); Greene v. WCI Holding Corp., 956 F. Supp. 509, 513 (S.D.N.Y. 1997). "Where a party makes a 'specific written objection' within '[ten] days after being served with a copy of the [magistrate judge's] recommended disposition,' however, the district court is required to make a de novo determination regarding those part of the report." Cespedos v. Coughlin, 956 F. Supp. 454, 463 (S.D.N.Y. 1997) (quoting United States v. Raddatz, 447 U.S. 667, 676 (1980)). A district judge may accept, reject, or modify, in whole or in part, the findings and recommendations of the Magistrate Judge. See DeLuca v. Lord, 858 F. Supp. 1330, 1345 (S.D.N.Y. 1994); Walker v. Hood, 679 F. Supp. 372, 374 (S.D.N.Y. 1988).

III. DISCUSSION

The Court finds that the facts set forth in the Report are supported by the record and are thus incorporated herein by reference. Having conducted a review of the full record, including, among other things, the Report and applicable legal authorities, the Court finds the findings, reasoning and legal support for the recommendations made in Report are not clearly erroneous. Insofar as Zumba's counsel objects to the condition the Magistrate Judge recommended, upon full review of the circumstances the Court finds the provision appropriate, and well within the discretion of the Court to impose. See Zimpro Inc. v. United States Environmental Prot. Ag., 83 F.R.D. 302, 303 (N.D.N.Y. 1979). Counsel should provide defendants whatever may be the latest contact information

they have for Zumba. The Court also adopts Zumba's attorneys' proposal that they accept service of any deposition or trial subpoena on Zumba's behalf should one be served. Counsel should also undertake to forward any such subpoena to Zumba in the event her whereabouts become known to them.

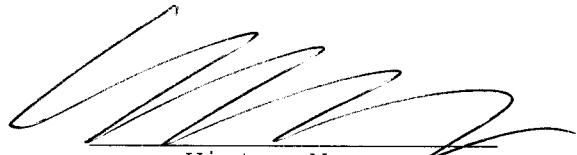
ORDER

For the reasons discussed above, it is hereby

ORDERED that the Report and Recommendation of Magistrate Judge Kevin Fox dated September 27, 2005 (Docket No. 127) is adopted in its entirety, and the motion of plaintiff Elena Zumba to withdraw from this action without prejudice (Docket No. 67) is GRANTED.

SO ORDERED.

Dated: NEW YORK, NEW YORK
19 October 2005



Victor Marrero
U.S.D.J.